

108TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

---

IN THE SENATE OF THE UNITED STATES

Mr. LEVIN (for himself and Mr. COLEMAN) introduced the following bill;  
which was read twice and referred to the Committee on \_\_\_\_\_

---

**A BILL**

To restrict the use of abusive tax shelters and offshore  
tax havens to inappropriately avoid Federal taxation,  
and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; ETC.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Tax Shelter and Tax Haven Reform Act”.

6       (b) AMENDMENT OF 1986 CODE.—Except as other-  
7       wise expressly provided, whenever in this Act an amend-  
8       ment or repeal is expressed in terms of an amendment  
9       to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-  
2 sion of the Internal Revenue Code of 1986.

3 (c) TABLE OF CONTENTS.—The table of contents for  
4 this Act is as follows:

Sec. 1. Short title; etc.

#### TITLE I—STRENGTHENING TAX SHELTER PENALTIES

- Sec. 101. Penalty for promoting abusive tax shelters.
- Sec. 102. Penalty for aiding and abetting the understatement of tax liability.
- Sec. 103. Penalty for failing to register tax shelter.
- Sec. 104. Penalty for failing to maintain client list.
- Sec. 105. Penalty for failing to disclose potentially abusive tax shelter.
- Sec. 106. Improved disclosure of potentially abusive tax shelters.
- Sec. 107. Extension of statute of limitations for undisclosed tax shelter.
- Sec. 108. Expansion of injunctive relief to stop certain conduct related to tax shelter or understatement of tax liability.
- Sec. 109. Penalty for failing to report interests in foreign financial accounts.

#### TITLE II—PREVENTING ABUSIVE TAX SHELTERS

- Sec. 201. Censure, civil fines, and tax opinion standards for tax practitioners.
- Sec. 202. Expansion of tax shelter exception to tax practitioner privilege.
- Sec. 203. Information sharing for enforcement purposes.
- Sec. 204. Disclosure of information to Congress.
- Sec. 205. Contingent fee prohibition.
- Sec. 206. Sense of the Senate on tax enforcement priorities.

#### TITLE III—REQUIRING ECONOMIC SUBSTANCE

- Sec. 301. Clarification of economic substance doctrine.
- Sec. 302. Accuracy-related penalty for listed transactions and other potentially abusive tax shelters having a significant tax avoidance purpose.
- Sec. 303. Penalty for understatements attributable to transactions lacking economic substance, etc.
- Sec. 304. Denial of deduction for interest on underpayments attributable to noneconomic substance transactions.

#### TITLE IV—DETERRING UNCOOPERATIVE TAX HAVENS

- Sec. 401. Disclosing payments to persons in uncooperative tax havens.
- Sec. 402. Deterring uncooperative tax havens by restricting allowable tax benefits.

1     **TITLE I—STRENGTHENING TAX**  
2             **SHELTER PENALTIES**

3     **SEC. 101. PENALTY FOR PROMOTING ABUSIVE TAX SHEL-**  
4             **TERS.**

5             (a) PENALTY FOR PROMOTING ABUSIVE TAX SHEL-  
6     TERS.—Section 6700 (relating to promoting abusive tax  
7     shelters, etc.) is amended—

8             (1) by redesignating subsections (b) and (c) as  
9             subsections (d) and (e), respectively,

10            (2) by striking “a penalty” and all that follows  
11            through the period in the first sentence of subsection  
12            (a) and inserting “a penalty determined under sub-  
13            section (b)”, and

14            (3) by inserting after subsection (a) the fol-  
15            lowing new subsections:

16            “(b) AMOUNT OF PENALTY; CALCULATION OF PEN-  
17     ALTY; LIABILITY FOR PENALTY.—

18            “(1) AMOUNT OF PENALTY.—The amount of  
19            the penalty imposed by subsection (a) shall not ex-  
20            ceed the greater of—

21            “(A) 150 percent of the gross income de-  
22            rived (or to be derived) from such activity by  
23            the person or persons subject to such penalty,  
24            and

1           “(B) if readily subject to calculation, the  
2           total amount of underpayment by the taxpayer  
3           (including penalties, interest, and taxes) in con-  
4           nection with such activity.

5           “(2) CALCULATION OF PENALTY.—The penalty  
6           amount determined under paragraph (1) shall be  
7           calculated with respect to each instance of an activ-  
8           ity described in subsection (a), each instance in  
9           which income was derived by the person or persons  
10          subject to such penalty, and each person who par-  
11          ticipated in such an activity.

12          “(3) LIABILITY FOR PENALTY.—If more than 1  
13          person is liable under subsection (a) with respect to  
14          such activity, all such persons shall be jointly and  
15          severally liable for the penalty under such sub-  
16          section.

17          “(c) PENALTY NOT DEDUCTIBLE.—The payment of  
18          any penalty imposed under this section or the payment  
19          of any amount to settle or avoid the imposition of such  
20          penalty shall not be considered an ordinary and necessary  
21          expense in carrying on a trade or business for purposes  
22          of this title and shall not be deductible by the person who  
23          is subject to such penalty or who makes such payment.”.

1 (b) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to activities after the date of the  
3 enactment of this Act.

4 **SEC. 102. PENALTY FOR AIDING AND ABETTING THE UN-**  
5 **DERSTATEMENT OF TAX LIABILITY.**

6 (a) IN GENERAL.—Section 6701(a) (relating to im-  
7 position of penalty) is amended—

8 (1) by inserting “the tax liability or” after “re-  
9 spect to,” in paragraph (1),

10 (2) by inserting “aid, assistance, procurement,  
11 or advice with respect to such” before “portion”  
12 both places it appears in paragraphs (2) and (3),  
13 and

14 (3) by inserting “instance of aid, assistance,  
15 procurement, or advice or each such” before “docu-  
16 ment” in the matter following paragraph (3).

17 (b) AMOUNT OF PENALTY.—Subsection (b) of section  
18 6701 (relating to penalties for aiding and abetting under-  
19 statement of tax liability) is amended to read as follows:

20 “(b) AMOUNT OF PENALTY; CALCULATION OF PEN-  
21 ALTY; LIABILITY FOR PENALTY.—

22 “(1) AMOUNT OF PENALTY.—The amount of  
23 the penalty imposed by subsection (a) shall not ex-  
24 ceed the greater of—

1                   “(i) 150 percent of the gross income  
2                   derived (or to be derived) from such aid,  
3                   assistance, procurement, or advice provided  
4                   by the person or persons subject to such  
5                   penalty, and

6                   “(ii) if readily subject to calculation,  
7                   the total amount of underpayment by the  
8                   taxpayer (including penalties, interest, and  
9                   taxes) in connection with the understate-  
10                  ment of the liability for tax.

11               “(2) CALCULATION OF PENALTY.—The penalty  
12               amount determined under paragraph (1) shall be  
13               calculated with respect to each instance of aid, as-  
14               sistance, procurement, or advice described in sub-  
15               section (a), each instance in which income was de-  
16               rived by the person or persons subject to such pen-  
17               alty, and each person who made such an understate-  
18               ment of the liability for tax.

19               “(3) LIABILITY FOR PENALTY.—If more than 1  
20               person is liable under subsection (a) with respect to  
21               providing such aid, assistance, procurement, or ad-  
22               vice, all such persons shall be jointly and severally  
23               liable for the penalty under such subsection.”.

1 (c) PENALTY NOT DEDUCTIBLE.—Section 6701 is  
2 amended by adding at the end the following new sub-  
3 section:

4 “(g) PENALTY NOT DEDUCTIBLE.—The payment of  
5 any penalty imposed under this section or the payment  
6 of any amount to settle or avoid the imposition of such  
7 penalty shall not be considered an ordinary and necessary  
8 expense in carrying on a trade or business for purposes  
9 of this title and shall not be deductible by the person who  
10 is subject to such penalty or who makes such payment.”.

11 (d) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to activities after the date of the  
13 enactment of this Act.

14 **SEC. 103. PENALTY FOR FAILURE TO REGISTER TAX SHEL-**  
15 **TER.**

16 (a) IN GENERAL.—Section 6707 (relating to failure  
17 to furnish information regarding tax shelters) is amended  
18 to read as follows:

19 **“SEC. 6707. FAILURE TO FURNISH INFORMATION ON PO-**  
20 **TENTIALLY ABUSIVE TAX SHELTER OR LIST-**  
21 **ED TRANSACTION.**

22 “(a) IN GENERAL.—If a person who is required to  
23 file a return under section 6111 with respect to any poten-  
24 tially abusive tax shelter—

1           “(1) fails to file such return on or before the  
2           date prescribed therefor, or

3           “(2) files false or incomplete information with  
4           the Secretary with respect to such shelter,  
5           such person shall pay a penalty with respect to such return  
6           in the amount determined under subsection (b).

7           “(b) AMOUNT OF PENALTY.—

8           “(1) IN GENERAL.—Except as provided in para-  
9           graph (2), the penalty imposed under subsection (a)  
10          with respect to any failure shall be not less than  
11          \$50,000 and not more than \$100,000.

12          “(2) LISTED TRANSACTIONS.—The penalty im-  
13          posed under subsection (a) with respect to any listed  
14          transaction shall be an amount equal to the greater  
15          of—

16                 “(A) \$200,000, or

17                 “(B) 100 percent of the gross income de-  
18                 rived by such person for providing aid, assist-  
19                 ance, procurement, advice, or other services  
20                 with respect to the listed transaction before the  
21                 date the return including the transaction is  
22                 filed under section 6111.

23          Subparagraph (B) shall be applied by substituting  
24          ‘150 percent’ for ‘100 percent’ in the case of an in-  
25          tentional failure or act described in subsection (a).



1       “(c) CERTAIN RULES TO APPLY.—The provisions of  
2 section 6707A(d) allowing the Commissioner of Internal  
3 Revenue to rescind a penalty under certain circumstances  
4 shall apply to any penalty imposed under this section.

5       “(d) POTENTIALLY ABUSIVE TAX SHELTERS AND  
6 LISTED TRANSACTIONS.—The terms ‘potentially abusive  
7 tax shelter’ and ‘listed transaction’ have the respective  
8 meanings given to such terms by section 6707A(c).

9       “(e) PENALTY NOT DEDUCTIBLE.—The payment of  
10 any penalty imposed under this section or the payment  
11 of any amount to settle or avoid the imposition of such  
12 penalty shall not be considered an ordinary and necessary  
13 expense in carrying on a trade or business for purposes  
14 of this title and shall not be deductible by the person who  
15 is subject to such penalty or who makes such payment.”.

16       (b) CLERICAL AMENDMENT.—The item relating to  
17 section 6707 in the table of sections for part I of sub-  
18 chapter B of chapter 68 is amended by striking “regard-  
19 ing tax shelters” and inserting “on potentially abusive tax  
20 shelter or listed transaction”.

21       (c) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to returns the due date for which  
23 is after the date of the enactment of this Act.

1 **SEC. 104. PENALTY FOR FAILING TO MAINTAIN CLIENT**  
2 **LIST.**

3 (a) IN GENERAL.—Subsection (a) of section 6708  
4 (relating to failure to maintain lists of investors in poten-  
5 tially abusive tax shelters) is amended to read as follows:

6 “(a) IMPOSITION OF PENALTY.—

7 “(1) IN GENERAL.—If any person who is re-  
8 quired to maintain a list under section 6112(a) fails  
9 to make such list available upon written request to  
10 the Secretary in accordance with section  
11 6112(b)(1)(A) within 20 business days after the  
12 date of the Secretary’s request, such person shall  
13 pay a penalty of \$10,000 for each day of such fail-  
14 ure after such 20th day. If such person makes avail-  
15 able an incomplete list upon such request, such per-  
16 son shall pay a penalty of \$100 per each omitted  
17 name for each day of such omission after such 20th  
18 day.

19 “(2) GOOD CAUSE EXCEPTION.—No penalty  
20 shall be imposed by paragraph (1) with respect to  
21 the failure on any day if, in the judgment of the  
22 Secretary, such failure is due to good cause.”.

23 (b) PENALTY NOT DEDUCTIBLE.—Section 6708 is  
24 amended by adding at the end the following new sub-  
25 section:

1       “(c) PENALTY NOT DEDUCTIBLE.—The payment of  
2 any penalty imposed under this section or the payment  
3 of any amount to settle or avoid the imposition of such  
4 penalty shall not be considered an ordinary and necessary  
5 expense in carrying on a trade or business for purposes  
6 of this title and shall not be deductible by the person who  
7 is subject to such penalty or who makes such payment.”.

8       (c) EFFECTIVE DATE.—The amendments made by  
9 this section shall apply to requests made by the Secretary  
10 of the Treasury after the date of the enactment of this  
11 Act.

12 **SEC. 105. PENALTY FOR FAILING TO DISCLOSE POTEN-**  
13 **TIALY ABUSIVE TAX SHELTER.**

14       (a) IN GENERAL.—Part I of subchapter B of chapter  
15 68 (relating to assessable penalties) is amended by insert-  
16 ing after section 6707 the following new section:

17 **“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE POTEN-**  
18 **TIALY ABUSIVE TAX SHELTER INFORMA-**  
19 **TION WITH RETURN OR STATEMENT.**

20       “(a) IMPOSITION OF PENALTY.—Any person who  
21 fails to include on any return or statement any informa-  
22 tion with respect to a potentially abusive tax shelter which  
23 is required under section 6011 to be included with such  
24 return or statement shall pay a penalty in the amount de-  
25 termined under subsection (b).

1 “(b) AMOUNT OF PENALTY.—

2 “(1) IN GENERAL.—Except as provided in para-  
3 graphs (2) and (3), the amount of the penalty under  
4 subsection (a) shall be \$50,000.

5 “(2) LISTED TRANSACTION.—Except as pro-  
6 vided in paragraph 3, the amount of the penalty  
7 under subsection (a) with respect to a listed trans-  
8 action shall be \$100,000.

9 “(3) INCREASE IN PENALTY FOR INTENTIONAL  
10 NONDISCLOSURE.—In the case of an intentional fail-  
11 ure by any person under subsection (a), the penalty  
12 under paragraph (1) shall be \$100,000 and the pen-  
13 alty under paragraph (2) shall be \$200,000.

14 “(c) DEFINITIONS.—For purposes of this section—

15 “(1) POTENTIALLY ABUSIVE TAX SHELTER.—  
16 The term ‘potentially abusive tax shelter’ means any  
17 transaction with respect to which information is re-  
18 quired to be included with a return or statement, be-  
19 cause the Secretary has determined by regulation or  
20 otherwise that such transaction has a potential for  
21 tax avoidance or evasion.

22 “(2) LISTED TRANSACTION.—Except as pro-  
23 vided in regulations, the term ‘listed transaction’  
24 means a potentially abusive tax shelter which is the  
25 same as, or substantially similar to, a transaction

1 specifically identified by the Secretary as a tax  
2 avoidance transaction for purposes of section 6011.

3 “(d) AUTHORITY TO RESCIND PENALTY.—

4 “(1) IN GENERAL.—The Commissioner of In-  
5 ternal Revenue may rescind all or any portion of a  
6 penalty imposed by this section with respect to any  
7 violation if—

8 “(A) the violation is with respect to a po-  
9 tentially abusive tax shelter other than a listed  
10 transaction,

11 “(B) the person on whom the penalty is  
12 imposed has a history of complying with the re-  
13 quirements of this title,

14 “(C) it is shown that the violation is due  
15 to an unintentional mistake of fact,

16 “(D) imposing the penalty would be  
17 against equity and good conscience, and

18 “(E) rescinding the penalty would promote  
19 compliance with the requirements of this title  
20 and effective tax administration.

21 “(2) DISCRETION.—The exercise of authority  
22 under paragraph (1) shall be at the sole discretion  
23 of the Commissioner and may be delegated only to  
24 the head of the Office of Tax Shelter Analysis. The  
25 Commissioner, in the Commissioner’s sole discretion,

1       may establish a procedure to determine if a penalty  
2       should be referred to the Commissioner or the head  
3       of such Office for a determination under paragraph  
4       (1).

5           “(3) NO APPEAL.—Notwithstanding any other  
6       provision of law, any determination under this sub-  
7       section may not be reviewed in any administrative or  
8       judicial proceeding.

9           “(4) RECORDS.—If a penalty is rescinded under  
10      paragraph (1), the Commissioner shall place in the  
11      file in the Office of the Commissioner the opinion of  
12      the Commissioner or the head of the Office of Tax  
13      Shelter Analysis with respect to the determination,  
14      including—

15           “(A) the facts and circumstances of the  
16      transaction,

17           “(B) the reasons for the rescission, and

18           “(C) the amount of the penalty rescinded.

19      A copy of such opinion shall be provided upon writ-  
20      ten request to the Committee on Ways and Means  
21      of the House of Representatives, the Committee on  
22      Finance of the Senate, the Joint Committee on Tax-  
23      ation, or the General Accounting Office.

24           “(5) REPORT.—The Commissioner shall each  
25      year report to the Committee on Ways and Means

1 of the House of Representatives and the Committee  
2 on Finance of the Senate—

3 “(A) a summary of the total number and  
4 aggregate amount of penalties imposed, and re-  
5 scinded, under this section, and

6 “(B) a description of each penalty re-  
7 scinded under this subsection and the reasons  
8 therefor.

9 “(e) PENALTY REPORTED TO SEC.—In the case of  
10 a person—

11 “(1) which is required to file periodic reports  
12 under section 13 or 15(d) of the Securities Ex-  
13 change Act of 1934 or is required to be consolidated  
14 with another person for purposes of such reports,  
15 and

16 “(2) which—

17 “(A) is required to pay a penalty under  
18 this section with respect to a listed transaction,

19 “(B) is required to pay a penalty under  
20 section 6662A with respect to any potentially  
21 abusive tax shelter at a rate prescribed under  
22 section 6662A(c), or

23 “(C) is required to pay a penalty under  
24 section 6662B with respect to any noneconomic  
25 substance transaction,

1 the requirement to pay such penalty shall be disclosed in  
2 such reports filed by such person for such periods as the  
3 Secretary shall specify. Failure to make a disclosure in  
4 accordance with the preceding sentence shall be treated  
5 as a failure to which the penalty under subsection (b)(2)  
6 applies.

7 “(f) PENALTY IN ADDITION TO OTHER PEN-  
8 ALTIES.—The penalty imposed by this section shall be in  
9 addition to any other penalty provided by law.

10 “(g) PENALTY NOT DEDUCTIBLE.—The payment of  
11 any penalty imposed under this section or the payment  
12 of any amount to settle or avoid the imposition of such  
13 penalty shall not be considered an ordinary and necessary  
14 expense in carrying on a trade or business for purposes  
15 of this title and shall not be deductible by the person who  
16 is subject to such penalty or who makes such payment.”.

17 (b) CONFORMING AMENDMENT.—The table of sec-  
18 tions for part I of subchapter B of chapter 68 is amended  
19 by inserting after the item relating to section 6707 the  
20 following:

“Sec. 6707A. Penalty for failure to include potentially abusive tax  
shelter information with return or statement.”.

21 (c) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to returns and statements the due  
23 date for which is after the date of the enactment of this  
24 Act.



1   **SEC. 106. IMPROVED DISCLOSURE OF POTENTIALLY ABU-**  
2                   **SIVE TAX SHELTERS.**

3           (a) IN GENERAL.—Section 6111 (relating to registra-  
4   tion of tax shelters) is amended to read as follows:

5   **“SEC. 6111. DISCLOSURE OF POTENTIALLY ABUSIVE TAX**  
6                   **SHELTERS.**

7           “(a) IN GENERAL.—Each material advisor with re-  
8   spect to any potentially abusive tax shelter shall make a  
9   return (in such form as the Secretary may prescribe) set-  
10   ting forth—

11           “(1) information identifying and describing  
12   such shelter,

13           “(2) information describing any potential tax  
14   benefits expected to result from the shelter, and

15           “(3) such other information as the Secretary  
16   may prescribe.

17   Such return shall be filed not later than the date which  
18   is 30 days before the date on which the first sale of such  
19   shelter occurs or on any other date specified by the Sec-  
20   retary.

21           “(b) DEFINITIONS.—For purposes of this section—

22           “(1) MATERIAL ADVISOR.—

23                   “(A) IN GENERAL.—The term ‘material  
24   advisor’ means any person—

25                           “(i) who provides any material aid,  
26                           assistance, or advice with respect to de-

1 signing, organizing, managing, promoting,  
2 selling, implementing, or carrying out any  
3 potentially abusive tax shelter, and

4 “(ii) who directly or indirectly derives  
5 gross income in excess of the threshold  
6 amount for such aid, assistance, or advice.

7 “(B) THRESHOLD AMOUNT.—For purposes  
8 of subparagraph (A), the threshold amount is—

9 “(i) \$50,000 in the case of a poten-  
10 tially abusive tax shelter substantially all  
11 of the tax benefits from which are provided  
12 to natural persons, and

13 “(ii) \$100,000 in any other case.

14 “(2) POTENTIALLY ABUSIVE TAX SHELTER.—

15 The term ‘potentially abusive tax shelter’ has the  
16 meaning given to such term by section 6707A(c).

17 “(c) REGULATIONS.—The Secretary may prescribe  
18 regulations which provide—

19 “(1) that only 1 person shall be required to  
20 meet the requirements of subsection (a) in cases in  
21 which 2 or more persons would otherwise be re-  
22 quired to meet such requirements,

23 “(2) exemptions from the requirements of this  
24 section, and

1 “(3) such rules as may be necessary or appro-  
2 priate to carry out the purposes of this section.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) The item relating to section 6111 in the  
5 table of sections for subchapter B of chapter 61 is  
6 amended to read as follows:

“Sec. 6111. Disclosure of potentially abusive tax shelters.”.

7 (2)(A) So much of section 6112 as precedes  
8 subsection (c) thereof is amended to read as follows:

9 **“SEC. 6112. MATERIAL ADVISORS OF POTENTIALLY ABU-**  
10 **SIVE TAX SHELTERS MUST KEEP CLIENT**  
11 **LISTS.**

12 “(a) IN GENERAL.—Each material advisor (as de-  
13 fined in section 6111) with respect to any potentially abu-  
14 sive tax shelter (as defined in section 6707A(c)) shall  
15 maintain, in such manner as the Secretary may by regula-  
16 tions prescribe, a list—

17 “(1) identifying each person with respect to  
18 whom such advisor acted as such a material advisor  
19 with respect to such shelter, and

20 “(2) containing such other information as the  
21 Secretary may by regulations require.

22 This section shall apply without regard to whether a mate-  
23 rial advisor is required to file a return under section 6111  
24 with respect to such transaction.”.

1 (B) Section 6112 is amended by redesignating  
2 subsection (c) as subsection (b).

3 (C) Section 6112(b), as redesignated by sub-  
4 paragraph (B), is amended—

5 (i) by inserting “written” before “request”  
6 in paragraph (1)(A), and

7 (ii) by striking “shall prescribe” in para-  
8 graph (2) and inserting “may prescribe”.

9 (D) The item relating to section 6112 in the  
10 table of sections for subchapter B of chapter 61 is  
11 amended to read as follows:

“Sec. 6112. Material advisors of potentially abusive tax shelters  
must keep client lists.”.

12 (3)(A) The heading for section 6708 is amend-  
13 ed to read as follows:

14 **“SEC. 6708. FAILURE TO MAINTAIN CLIENT LISTS WITH RE-**  
15 **SPECT TO POTENTIALLY ABUSIVE TAX SHEL-**  
16 **TERS.”.**

17 (B) The item relating to section 6708 in the  
18 table of sections for part I of subchapter B of chap-  
19 ter 68 is amended to read as follows:

“Sec. 6708. Failure to maintain client lists with respect to poten-  
tially abusive tax shelters.”.

20 (c) **REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM**  
21 **OF CONFIDENTIALITY.**—Section 6112(b)(1), as redesign-  
22 ated by subsection (b)(2)(B), is amended by adding at  
23 the end the following new flush sentence:

1 “For purposes of this section, the identity of any  
2 person on such list shall not be privileged.”.

3 (d) EFFECTIVE DATE.—

4 (1) IN GENERAL.—Except as provided in para-  
5 graph (2), the amendments made by this section  
6 shall apply to transactions with respect to which ma-  
7 terial aid, assistance, or advice referred to in section  
8 6111(b)(1)(A)(i) of the Internal Revenue Code of  
9 1986 (as added by this section) is provided after the  
10 date of the enactment of this Act.

11 (2) NO CLAIM OF CONFIDENTIALITY AGAINST  
12 DISCLOSURE.—The amendment made by subsection  
13 (c) shall take effect as if included in the amend-  
14 ments made by section 142 of the Deficit Reduction  
15 Act of 1984.

16 **SEC. 107. EXTENSION OF STATUTE OF LIMITATIONS FOR**  
17 **UNDISCLOSED TAX SHELTER.**

18 (a) IN GENERAL.—Section 6501(c) (relating to ex-  
19 ceptions) is amended by adding at the end the following  
20 new paragraph:

21 “(10) POTENTIALLY ABUSIVE TAX SHEL-  
22 TERS.—If a taxpayer fails to include on any return  
23 or statement for any taxable year any information  
24 with respect to a potentially abusive tax shelter (as  
25 defined in section 6707A(c)) which is required under

1 section 6011 to be included with such return or  
2 statement, the time for assessment of any tax im-  
3 posed by this title with respect to such transaction  
4 shall not expire before the date which is 2 years  
5 after the earlier of—

6 “(A) the date on which the Secretary is  
7 furnished the information so required; or

8 “(B) the date that a material advisor (as  
9 defined in section 6111) meets the requirements  
10 of section 6112 with respect to a request by the  
11 Secretary under section 6112(b) relating to  
12 such transaction with respect to such tax-  
13 payer.”.

14 (b) EFFECTIVE DATE.—The amendment made by  
15 this section shall apply to taxable years with respect to  
16 which the period for assessing a deficiency did not expire  
17 before the date of the enactment of this Act.

18 **SEC. 108. EXPANSION OF INJUNCTIVE RELIEF TO STOP**  
19 **CERTAIN CONDUCT RELATED TO TAX SHEL-**  
20 **TER OR UNDERSTATEMENT OF TAX LIABIL-**  
21 **ITY.**

22 (a) IN GENERAL.—Section 7408 (relating to action  
23 to enjoin promoters of abusive tax shelters, etc.) is amend-  
24 ed by redesignating subsection (c) as subsection (d) and

1 by striking subsections (a) and (b) and inserting the fol-  
2 lowing new subsections:

3       “(a) **AUTHORITY TO SEEK INJUNCTION.**—A civil ac-  
4 tion in the name of the United States to enjoin any person  
5 from further engaging in specified conduct may be com-  
6 menced at the request of the Secretary. Any action under  
7 this section shall be brought in the district court of the  
8 United States for the district in which such person resides,  
9 has his principal place of business, or has engaged in spec-  
10 ified conduct. The court may exercise its jurisdiction over  
11 such action (as provided in section 7402(a)) separate and  
12 apart from any other action brought by the United States  
13 against such person.

14       “(b) **ADJUDICATION AND DECREE.**—In any action  
15 under subsection (a), if the court finds—

16               “(1) that the person has engaged in any speci-  
17 fied conduct, and

18               “(2) that injunctive relief is appropriate to pre-  
19 vent recurrence of such conduct,

20 the court may enjoin such person from engaging in such  
21 conduct or in any other activity subject to penalty under  
22 this title.

23       “(c) **SPECIFIED CONDUCT.**—For purposes of this  
24 section, the term ‘specified conduct’ means any action, or

1 failure to take action, subject to penalty under section  
2 6700, 6701, 6707, 6707A, 6708, or 7206.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) The heading for section 7408 is amended to  
5 read as follows:

6 **“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RE-**  
7 **LATED TO TAX SHELTER OR UNDERSTATE-**  
8 **MENT OF TAX LIABILITY.”.**

9 (2) The table of sections for subchapter A of  
10 chapter 67 is amended by striking the item relating  
11 to section 7408 and inserting the following new  
12 item:

“Sec. 7408. Actions to enjoin specified conduct related to tax shelter or understatement of liability.”.

13 (c) EFFECTIVE DATE.—The amendment made by  
14 this section shall take effect on the day after the date of  
15 the enactment of this Act.

16 **SEC. 109. PENALTY FOR FAILING TO REPORT INTERESTS IN**  
17 **FOREIGN FINANCIAL ACCOUNTS.**

18 (a) IN GENERAL.—Section 5321(a)(5) of title 31,  
19 United States Code, is amended to read as follows:

20 “(5) FOREIGN FINANCIAL AGENCY TRANS-  
21 ACTION VIOLATION.—

22 “(A) PENALTY AUTHORIZED.—The Sec-  
23 retary of the Treasury may impose a civil  
24 money penalty on any person who violates, or



1 causes any violation of, any provision of section  
2 5314.

3 “(B) AMOUNT OF PENALTY.—

4 “(i) IN GENERAL.—Except as pro-  
5 vided in subparagraph (C), the amount of  
6 any civil penalty imposed under subpara-  
7 graph (A) shall not exceed \$10,000.

8 “(ii) REASONABLE CAUSE EXCEP-  
9 TION.—No penalty shall be imposed under  
10 subparagraph (A) with respect to any vio-  
11 lation if—

12 “(I) such violation was due to  
13 reasonable cause, and

14 “(II) the amount of the trans-  
15 action or the balance in the account  
16 at the time of the transaction was  
17 properly reported.

18 “(C) WILLFUL VIOLATIONS.—In the case  
19 of any person willfully violating, or willfully  
20 causing any violation of, any provision of sec-  
21 tion 5314, the amount of the civil penalty im-  
22 posed under subparagraph (A) shall be—

23 “(i) not less than \$5,000,

1 “(ii) not more than 50 percent of the  
2 amount determined under subparagraph  
3 (D), and

4 “(iii) subparagraph (B)(ii) shall not  
5 apply.

6 “(D) AMOUNT.—The amount determined  
7 under this subparagraph is—

8 “(i) in the case of a violation involving  
9 a transaction, the amount of the trans-  
10 action, or

11 “(ii) in the case of a violation involv-  
12 ing a failure to report the existence of an  
13 account or any identifying information re-  
14 quired to be provided with respect to an  
15 account, the balance in the account at the  
16 time of the violation.”.

17 (b) EFFECTIVE DATE.—The amendment made by  
18 this section shall apply to violations occurring after the  
19 date of the enactment of this Act.

## 20 **TITLE II—PREVENTING ABUSIVE** 21 **TAX SHELTERS**

### 22 **SEC. 201. CENSURE, CIVIL FINES, AND TAX OPINION STAND-** 23 **ARDS FOR TAX PRACTITIONERS.**

24 (a) CENSURE; IMPOSITION OF MONETARY PEN-  
25 ALTY.—

1           (1) IN GENERAL.—Section 330(b) of title 31,  
2       United States Code, is amended—

3                   (A) by inserting “, or censure,” after “De-  
4       partment”, and

5                   (B) by adding at the end the following new  
6       flush sentence:

7       “The Secretary may impose a monetary penalty on any  
8       representative described in the preceding sentence. If the  
9       representative was acting on behalf of an employer or any  
10      firm or other entity in connection with the conduct giving  
11      rise to such penalty, the Secretary may impose a monetary  
12      penalty on such employer, firm, or entity if it knew, or  
13      reasonably should have known, of such conduct. Such pen-  
14      alty may be in addition to, or in lieu of, any suspension,  
15      disbarment, or censure of the representative.”.

16           (2) EFFECTIVE DATE.—The amendments made  
17      by this subsection shall apply to actions taken after  
18      the date of the enactment of this Act.

19           (b) TAX OPINION STANDARDS.—Section 330 of such  
20      title 31 is amended by adding at the end the following  
21      new subsection:

22           “(d) The Secretary of the Treasury shall impose  
23      standards applicable to the rendering of written advice  
24      with respect to any potentially abusive tax shelter or any  
25      entity, plan, arrangement, or transaction which has a po-

1 tential for tax avoidance or evasion. Such standards shall  
2 address, but not be limited to, the following issues:

3 “(1) Independence of the practitioner issuing  
4 such written advice from persons promoting, mar-  
5 keting, or recommending the subject of the advice.

6 “(2) Collaboration among practitioners, or be-  
7 tween a practitioner and other party, which could re-  
8 sult in such collaborating parties having a joint fi-  
9 nancial interest in the subject of the advice.

10 “(3) Avoidance of conflicts of interest which  
11 would impair auditor independence.

12 “(4) For written advice issued by a firm, stand-  
13 ards for reviewing the advice and ensuring the con-  
14 sensus support of the firm for positions taken.

15 “(5) Reliance on reasonable factual representa-  
16 tions by the taxpayer and other parties.

17 “(6) Appropriateness of the fees charged by the  
18 practitioner for the written advice.”.

19 **SEC. 202. EXPANSION OF TAX SHELTER EXCEPTION TO TAX**  
20 **PRACTITIONER PRIVILEGE.**

21 (a) IN GENERAL.—Subsection (b) of section 7525  
22 (relating to confidentiality privileges relating to taxpayer  
23 communications) is amended to read as follows:

1       “(b) NO PRIVILEGE FOR COMMUNICATIONS REGARD-  
2   ING TAX SHELTERS.—The privilege under subsection (a)  
3   shall not apply to any communication which is—

4               “(1) between a federally authorized tax practi-  
5   tioner and—

6                       “(A) any person,

7                       “(B) any director, officer, employee, agent,  
8                       or representative of the person, or

9                       “(C) any other person holding a capital or  
10                      profits interest in the person, and

11               “(2) in connection with the promotion of the di-  
12   rect or indirect participation of the person in any  
13   tax shelter (as defined in section 1274(b)(3)(C),  
14   6662, or 6707A).”.

15       (b) EFFECTIVE DATE.—The amendment made by  
16   this section shall apply to communications made on or  
17   after the date of the enactment of this Act.

18   **SEC. 203. INFORMATION SHARING FOR ENFORCEMENT**  
19                       **PURPOSES.**

20       (a) PROMOTION OF PROHIBITED TAX SHELTERS OR  
21   TAX AVOIDANCE SCHEMES.—Section 6103(h) (relating to  
22   disclosure to certain Federal officers and employees for  
23   purposes of tax administration, etc.) is amended by adding  
24   at the end the following new paragraph:

1           “(7) DISCLOSURE OF RETURNS AND RETURN  
2           INFORMATION RELATED TO PROMOTION OF PROHIB-  
3           ITED TAX SHELTERS OR TAX AVOIDANCE  
4           SCHEMES.—

5           “(A) WRITTEN REQUEST.—Upon receipt  
6           by the Secretary of a written request which  
7           meets the requirements of subparagraph (B)  
8           from the head of the United States Securities  
9           and Exchange Commission, an appropriate  
10          Federal banking agency as defined under sec-  
11          tion 1813(q) of title 12, United States Code, or  
12          the Public Company Accounting Oversight  
13          Board, a return or return information shall be  
14          disclosed to such requestor’s officers and em-  
15          ployees who are personally and directly engaged  
16          in an investigation, examination, or proceeding  
17          by such requestor to evaluate, determine, penal-  
18          ize, or deter conduct by a financial institution,  
19          issuer, or public accounting firm, or associated  
20          person, in connection with a potential or actual  
21          violation of section 6700 (promotion of abusive  
22          tax shelters), 6701 (aiding and abetting under-  
23          statement of tax liability), or activities related  
24          to promoting or facilitating inappropriate tax  
25          avoidance or tax evasion. Such disclosure shall

1 be solely for use by such officers and employees  
2 in such investigation, examination, or pro-  
3 ceeding.

4 “(B) REQUIREMENTS.—A request meets  
5 the requirements of this subparagraph if it sets  
6 forth—

7 “(i) the nature of the investigation,  
8 examination, or proceeding,

9 “(ii) the statutory authority under  
10 which such investigation, examination, or  
11 proceeding is being conducted,

12 “(iii) the name or names of the finan-  
13 cial institution, issuer, or public accounting  
14 firm to which such return information re-  
15 lates,

16 “(iv) the taxable period or periods to  
17 which such return information relates, and

18 “(v) the specific reason or reasons  
19 why such disclosure is, or may be, relevant  
20 to such investigation, examination or pro-  
21 ceeding.

22 “(C) FINANCIAL INSTITUTION.—For the  
23 purposes of this paragraph, the term ‘financial  
24 institution’ means a depository institution, for-  
25 eign bank, insured institution, industrial loan

1 company, broker, dealer, investment company,  
2 investment advisor, or other entity subject to  
3 regulation or oversight by the United States Se-  
4 curities and Exchange Commission or an appro-  
5 priate Federal banking agency.”.

6 (b) FINANCIAL AND ACCOUNTING FRAUD INVESTIGA-  
7 TIONS.—Section 6103(i) (relating to disclosure to Federal  
8 officers or employees for administration of Federal laws  
9 not relating to tax administration) is amended by adding  
10 at the end the following new paragraph:

11 “(9) DISCLOSURE OF RETURNS AND RETURN  
12 INFORMATION FOR USE IN FINANCIAL AND AC-  
13 COUNTING FRAUD INVESTIGATIONS.—

14 “(A) WRITTEN REQUEST.—Upon receipt  
15 by the Secretary of a written request which  
16 meets the requirements of subparagraph (B)  
17 from the head of the United States Securities  
18 and Exchange Commission or the Public Com-  
19 pany Accounting Oversight Board, a return or  
20 return information shall be disclosed to such re-  
21 questor’s officers and employees who are per-  
22 sonally and directly engaged in an investigation,  
23 examination, or proceeding by such requester to  
24 evaluate the accuracy of a financial statement  
25 or report or to determine, require a restate-



1           ment, penalize, or deter conduct by an issuer,  
2           investment company, or public accounting firm,  
3           or associated person, in connection with a po-  
4           tential or actual violation of auditing standards  
5           or prohibitions against false or misleading  
6           statements or omissions in financial statements  
7           or reports. Such disclosure shall be solely for  
8           use by such officers and employees in such in-  
9           vestigation, examination or proceeding.

10           “(B) REQUIREMENTS.—A request meets  
11           the requirements of this subparagraph if it sets  
12           forth—

13                   “(i) the nature of the investigation,  
14                   examination, or proceeding,

15                   “(ii) the statutory authority under  
16                   which such investigation, examination, or  
17                   proceeding is being conducted,

18                   “(iii) the name or names of the issuer,  
19                   investment company, or public accounting  
20                   firm to which such return information re-  
21                   lates,

22                   “(iv) the taxable period or periods to  
23                   which such return information relates, and

24                   “(v) the specific reason or reasons  
25                   why such disclosure is, or may be, relevant

1 to such investigation, examination or pro-  
2 ceeding.”.

3 (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to disclosures and to information  
5 and document requests made after the date of the enact-  
6 ment of this Act.

7 **SEC. 204. DISCLOSURE OF INFORMATION TO CONGRESS.**

8 (a) DISCLOSURE BY TAX RETURN PREPARER.—

9 (1) IN GENERAL.—Subparagraph (B) of section  
10 7216(b)(1) (relating to disclosures) is amended to  
11 read as follows:

12 “(B) pursuant to any 1 of the following  
13 documents, if clearly identified:

14 “(i) The order of any Federal, State,  
15 or local court of record.

16 “(ii) A subpoena issued by a Federal  
17 or State grand jury.

18 “(iii) An administrative order, sum-  
19 mons, or subpoena which is issued in the  
20 performance of its duties by—

21 “(I) any Federal agency, includ-  
22 ing Congress or any committee or  
23 subcommittee thereof, or

24 “(II) any State agency, body, or  
25 commission charged under the laws of

1 the State or a political subdivision of  
2 the State with the licensing, registra-  
3 tion, or regulation of tax return pre-  
4 parers.”.

5 (2) EFFECTIVE DATE.—The amendment made  
6 by this subsection shall apply to disclosures made  
7 after the date of the enactment of this Act pursuant  
8 to any document in effect on or after such date.

9 (b) DISCLOSURE BY SECRETARY.—Paragraph (2) of  
10 section 6104(a) (relating to inspection of applications for  
11 tax exemption or notice of status) is amended to read as  
12 follows:

13 “(2) INSPECTION BY CONGRESS.—

14 “(A) IN GENERAL.—Upon receipt of a  
15 written request from a committee or sub-  
16 committee of Congress, copies of documents re-  
17 lated to a determination by the Secretary to  
18 grant, deny, revoke, or restore an organization’s  
19 exemption from taxation under section 501 or  
20 527 shall be provided to such committee or sub-  
21 committee, including any application, notice of  
22 status, or supporting information provided by  
23 such organization to the Internal Revenue Serv-  
24 ice; any letter, analysis or other document pro-  
25 duced by or for the Internal Revenue Service

1 evaluating, determining, explaining, or relating  
2 to the tax exempt status of such organization  
3 (other than returns, unless such returns are  
4 available to the public under this section or sec-  
5 tion 6103 or 6110); and any communication be-  
6 tween the Internal Revenue Service and any  
7 other party relating to the tax exempt status of  
8 such organization.

9 “(B) ADDITIONAL INFORMATION.—Section  
10 6103(f) shall apply with respect to—

11 “(i) the application for exemption of  
12 any organization described in subsection  
13 (c) or (d) of section 501 which is exempt  
14 from taxation under section 501(a) for any  
15 taxable year or notice of status of any po-  
16 litical organization which is exempt from  
17 taxation under section 527 for any taxable  
18 year, and any application referred to in  
19 subparagraph (B) of subsection (a)(1) of  
20 this section, and

21 “(ii) any other papers which are in  
22 the possession of the Secretary and which  
23 relate to such application,

24 as if such papers constituted returns.”.

1       (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to disclosures and to information  
3 and document requests made after the date of the enact-  
4 ment of this Act.

5 **SEC. 205. CONTINGENT FEE PROHIBITION.**

6       (a) IN GENERAL.—Section 6701, as amended by this  
7 Act, is amended—

8           (1) by redesignating subsections (f) and (g) as  
9 subsections (g) and (h), respectively,

10          (2) by striking “subsection (a).” in paragraphs  
11 (2) and (3) of subsection (g) (as redesignated by  
12 paragraph (1)) and inserting “subsection (a) or  
13 (f).”, and

14          (3) by inserting after subsection (e) the fol-  
15 lowing new subsection:

16       “(f) CONTINGENT FEE PROHIBITION.—

17           “(1) IN GENERAL.—Any person who makes an  
18 agreement for, charges, or collects a fee which is for  
19 services provided in connection with the internal rev-  
20 enue laws, and which is contingent upon the actual  
21 or projected achievement of—

22                   “(A) Federal tax savings or benefits, or

23                   “(B) losses which can be used to offset  
24 other taxable income,

1       shall pay a penalty with respect to each such fee ac-  
2       tivity in the amount determined under subsection  
3       (b).

4               “(2) REGULATIONS.—The Secretary may issue  
5       rules to carry out the purposes of this subsection  
6       and may provide for exceptions for fee arrangements  
7       that are in the public interest.”.

8       (b) EFFECTIVE DATE.—The amendments made by  
9       this section shall apply to fee agreements, charges, and  
10      collections made after the date of the enactment of this  
11      Act.

12   **SEC. 206. SENSE OF THE SENATE ON TAX ENFORCEMENT**  
13               **PRIORITIES.**

14       It is the sense of the Senate that additional funds  
15      should be appropriated for Internal Revenue Service en-  
16      forcement efforts and that the Internal Revenue Service  
17      should devote proportionately more of its enforcement  
18      funds—

19               (1) to combat the promotion of abusive tax  
20      shelters for corporations and high net worth individ-  
21      uals and the aiding and abetting of tax evasion,

22               (2) to stop accounting, law, and financial firms  
23      involved in such promotion and aiding and abetting,  
24      and

(3) to combat the use of offshore financial ac-  
counts to conceal taxable income.

3           **TITLE III—REQUIRING**  
4           **ECONOMIC SUBSTANCE**

5 SEC. 301. CLARIFICATION OF ECONOMIC SUBSTANCE DOC-  
6 TRINE.

(a) IN GENERAL.—Section 7701 (relating to defini-  
tions) is amended by redesignating subsection (n) as sub-  
section (o) and by inserting after subsection (m) the fol-  
lowing new subsection:

11           “(n) CLARIFICATION OF ECONOMIC SUBSTANCE  
12 DOCTRINE; ETC.—

13 “(1) GENERAL RULES.—

“(A) IN GENERAL.—In applying the economic substance doctrine, the determination of whether a transaction satisfies such doctrine shall be made as provided in this subsection.

18 “(B) APPLICATION OF ECONOMIC SUB-  
19 STANCE DOCTRINE.—For purposes of subpara-  
20 graph (A)—

21 “(i) IN GENERAL.—A transaction sat-  
22 isfies the economic substance doctrine only  
23 if—

24 “(I) the transaction changes in a  
25 meaningful way, apart from Federal

1 tax effects (and, if there are any Fed-  
2 eral tax effects, also apart from any  
3 foreign, State, or local tax effects),  
4 the taxpayer's economic position, and  
5 “(II) the taxpayer has a substan-  
6 tial nontax purpose for entering into  
7 such transaction and the transaction  
8 is a reasonable means of accom-  
9 plishing such purpose.

10 In applying subclause (II), a purpose of  
11 achieving a financial accounting benefit  
12 shall not be taken into account in deter-  
13 mining whether a transaction has a sub-  
14 stantial nontax purpose if the origin of  
15 such financial accounting benefit is a re-  
16 duction of income tax or achievement of a  
17 tax benefit.

18 “(ii) SPECIAL RULE WHERE TAX-  
19 PAYER RELIES ON PROFIT POTENTIAL.—A  
20 transaction shall not be treated as satis-  
21 fying the economic substance doctrine by  
22 reason of having a potential for profit  
23 unless—

24 “(I) the present value of the rea-  
25 sonably expected pre-tax profit from



1 the transaction is substantial in rela-  
2 tion to the present value of the ex-  
3 pected net tax benefits that would be  
4 allowed if the transaction were re-  
5 spected, and

6 “(II) the reasonably expected  
7 pre-tax profit from the transaction ex-  
8 ceeds a risk-free rate of return.

9 “(C) TREATMENT OF FEES AND FOREIGN  
10 TAXES.—Fees and other transaction expenses  
11 and foreign taxes shall be taken into account as  
12 expenses in determining pre-tax profit under  
13 subparagraph (B)(ii).

14 “(2) SPECIAL RULES FOR TRANSACTIONS WITH  
15 TAX-INDIFFERENT PARTIES.—

16 “(A) SPECIAL RULES FOR FINANCING  
17 TRANSACTIONS.—The form of a transaction  
18 which is in substance the borrowing of money  
19 or the acquisition of financial capital directly or  
20 indirectly from a tax-indifferent party shall not  
21 be respected if the present value of the deduc-  
22 tions to be claimed with respect to the trans-  
23 action is substantially in excess of the present  
24 value of the anticipated economic returns of the  
25 person lending the money or providing the fi-

1           nancial capital. A public offering shall be treat-  
2           ed as a borrowing, or an acquisition of financial  
3           capital, from a tax-indifferent party if it is rea-  
4           sonably expected that at least 50 percent of the  
5           offering will be placed with tax-indifferent par-  
6           ties.

7           “(B) ARTIFICIAL INCOME SHIFTING AND  
8           BASIS ADJUSTMENTS.—The form of a trans-  
9           action with a tax-indifferent party shall not be  
10          respected if—

11                 “(i) it results in an allocation of in-  
12                 come or gain to the tax-indifferent party in  
13                 excess of such party’s economic income or  
14                 gain, or

15                 “(ii) it results in a basis adjustment  
16                 or shifting of basis on account of over-  
17                 stating the income or gain of the tax-indif-  
18                 ferent party.

19           “(3) DEFINITIONS AND SPECIAL RULES.—For  
20          purposes of this subsection—

21                 “(A) ECONOMIC SUBSTANCE DOCTRINE.—  
22                 The term ‘economic substance doctrine’ means  
23                 the common law doctrine under which tax bene-  
24                 fits under subtitle A with respect to a trans-  
25                 action are not allowable if the transaction does

1 not have economic substance or lacks a business  
2 purpose.

3 “(B) TAX-INDIFFERENT PARTY.—The  
4 term ‘tax-indifferent party’ means any person  
5 or entity not subject to tax imposed by subtitle  
6 A. A person shall be treated as a tax-indifferent  
7 party with respect to a transaction if the items  
8 taken into account with respect to the trans-  
9 action have no substantial impact on such per-  
10 son’s liability under subtitle A.

11 “(C) EXCEPTION FOR PERSONAL TRANS-  
12 ACTIONS OF INDIVIDUALS.—In the case of an  
13 individual, this subsection shall apply only to  
14 transactions entered into in connection with a  
15 trade or business or an activity engaged in for  
16 the production of income.

17 “(D) TREATMENT OF LESSORS.—In apply-  
18 ing subclause (I) of paragraph (1)(B)(ii) to the  
19 lessor of tangible property subject to a lease—

20 “(i) the expected net tax benefits with  
21 respect to the leased property shall not in-  
22 clude the benefits of—

23 “(I) depreciation,

24 “(II) any tax credit, or

1 “(III) any other deduction as  
2 provided in guidance by the Secretary,  
3 and

4 “(ii) subclause (II) of paragraph  
5 (1)(B)(ii) shall be disregarded in deter-  
6 mining whether any of such benefits are al-  
7 lowable.

8 “(4) OTHER COMMON LAW DOCTRINES NOT AF-  
9 FECTED.—Except as specifically provided in this  
10 subsection, the provisions of this subsection shall not  
11 be construed as altering or supplanting any other  
12 rule of law, and the requirements of this subsection  
13 shall be construed as being in addition to any such  
14 other rule of law.

15 “(5) REGULATIONS.—The Secretary shall pre-  
16 scribe such regulations as may be necessary or ap-  
17 propriate to carry out the purposes of this sub-  
18 section. Such regulations may include exemptions  
19 from the application of this subsection.”.

20 (b) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to transactions entered into after  
22 the date of the enactment of this Act.

1 **SEC. 302. ACCURACY-RELATED PENALTY FOR LISTED**  
2 **TRANSACTIONS AND OTHER POTENTIALLY**  
3 **ABUSIVE TAX SHELTERS HAVING A SIGNIFI-**  
4 **CANT TAX AVOIDANCE PURPOSE.**

5 (a) IN GENERAL.—Subchapter A of chapter 68 is  
6 amended by inserting after section 6662 the following new  
7 section:

8 **“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PEN-**  
9 **ALTY ON UNDERSTATEMENTS WITH RESPECT**  
10 **TO POTENTIALLY ABUSIVE TAX SHELTER.**

11 “(a) IMPOSITION OF PENALTY.—If a taxpayer has a  
12 potentially abusive tax shelter understatement for any tax-  
13 able year, there shall be added to the tax an amount equal  
14 to 20 percent of the amount of such understatement.

15 “(b) POTENTIALLY ABUSIVE TAX SHELTER UNDER-  
16 STATEMENT.—For purposes of this section—

17 “(1) IN GENERAL.—The term ‘potentially abu-  
18 sive tax shelter understatement’ means the sum of—

19 “(A) the product of—

20 “(i) the amount of the increase (if  
21 any) in taxable income which results from  
22 a difference between the proper tax treat-  
23 ment of an item to which this section ap-  
24 plies and the taxpayer’s treatment of such  
25 item (as shown on the taxpayer’s return of  
26 tax), and

1                   “(ii) the highest rate of tax imposed  
2                   by section 1 (section 11 in the case of a  
3                   taxpayer which is a corporation), and

4                   “(B) the amount of the decrease (if any)  
5                   in the aggregate amount of credits determined  
6                   under subtitle A which results from a difference  
7                   between the taxpayer’s treatment of an item to  
8                   which this section applies (as shown on the tax-  
9                   payer’s return of tax) and the proper tax treat-  
10                  ment of such item.

11               For purposes of subparagraph (A), any reduction of  
12               the excess of deductions allowed for the taxable year  
13               over gross income for such year, and any reduction  
14               in the amount of capital losses which would (without  
15               regard to section 1211) be allowed for such year,  
16               shall be treated as an increase in taxable income.

17               “(2) ITEMS TO WHICH SECTION APPLIES.—This  
18               section shall apply to any item which is attributable  
19               to—

20                   “(A) any listed transaction, and

21                   “(B) any potentially abusive tax shelter  
22                   (other than a listed transaction) if a significant  
23                   purpose of such transaction is the avoidance or  
24                   evasion of Federal income tax.

1       “(c) HIGHER PENALTY FOR NONDISCLOSED LISTED  
2 AND OTHER AVOIDANCE TRANSACTIONS.—

3           “(1) IN GENERAL.—Subsection (a) shall be ap-  
4 plied by substituting ‘30 percent’ for ‘20 percent’  
5 with respect to the portion of any potentially abusive  
6 tax shelter understatement with respect to which the  
7 requirement of section 6664(d)(2)(A) is not met.

8           “(2) RULES APPLICABLE TO ASSERTION AND  
9 COMPROMISE OF PENALTY.—

10           “(A) IN GENERAL.—Only upon the ap-  
11 proval by the Chief Counsel for the Internal  
12 Revenue Service or the Chief Counsel’s delegate  
13 at the national office of the Internal Revenue  
14 Service may a penalty to which paragraph (1)  
15 applies be included in a 1st letter of proposed  
16 deficiency which allows the taxpayer an oppor-  
17 tunity for administrative review in the Internal  
18 Revenue Service Office of Appeals. If such a  
19 letter is provided to the taxpayer, only the Com-  
20 missioner of Internal Revenue may compromise  
21 all or any portion of such penalty.

22           “(B) APPLICABLE RULES.—The rules of  
23 paragraphs (2), (3), (4), and (5) of section  
24 6707A(d) shall apply for purposes of subpara-  
25 graph (A).

1       “(d) DEFINITIONS OF POTENTIALLY ABUSIVE TAX  
2 SHELTER AND LISTED TRANSACTION.—For purposes of  
3 this section, the terms ‘potentially abusive tax shelter’ and  
4 ‘listed transaction’ have the respective meanings given to  
5 such terms by section 6707A(c).

6       “(e) SPECIAL RULES.—

7           “(1) COORDINATION WITH PENALTIES, ETC.,  
8 ON OTHER UNDERSTATEMENTS.—In the case of an  
9 understatement (as defined in section 6662(d)(2))—

10           “(A) the amount of such understatement  
11 (determined without regard to this paragraph)  
12 shall be increased by the aggregate amount of  
13 potentially abusive tax shelter understatements  
14 and noneconomic substance transaction under-  
15 statements for purposes of determining whether  
16 such understatement is a substantial under-  
17 statement under section 6662(d)(1), and

18           “(B) the addition to tax under section  
19 6662(a) shall apply only to the excess of the  
20 amount of the substantial understatement (if  
21 any) after the application of subparagraph (A)  
22 over the aggregate amount of potentially abu-  
23 sive tax shelter understatements and non-  
24 economic substance transaction understate-  
25 ments.



1           “(2) COORDINATION WITH OTHER PEN-  
2       ALTIES.—

3           “(A) APPLICATION OF FRAUD PENALTY.—  
4       References to an underpayment in section 6663  
5       shall be treated as including references to a po-  
6       tentially abusive tax shelter understatement and  
7       a noneconomic substance transaction under-  
8       statement.

9           “(B) NO DOUBLE PENALTY.—This section  
10      shall not apply to any portion of an understate-  
11      ment on which a penalty is imposed under sec-  
12      tion 6662B or 6663.

13          “(3) SPECIAL RULE FOR AMENDED RE-  
14      TURNS.—Except as provided in regulations, in no  
15      event shall any tax treatment included with an  
16      amendment or supplement to a return of tax be  
17      taken into account in determining the amount of any  
18      potentially abusive tax shelter understatement or  
19      noneconomic substance transaction understatement  
20      if the amendment or supplement is filed after the  
21      earlier of the date the taxpayer is first contacted by  
22      the Secretary regarding the examination of the re-  
23      turn or such other date as is specified by the Sec-  
24      retary.

1                   “(4) NONECONOMIC SUBSTANCE TRANS-  
2                   ACTION UNDERSTATEMENT.—For purposes of  
3                   this subsection, the term ‘noneconomic sub-  
4                   stance transaction understatement’ has the  
5                   meaning given such term by section 6662B(c).

6                   “(5) CROSS REFERENCE.—

**“For reporting of section 6662A(c) penalty to the  
                  Securities and Exchange Commission, see section  
                  6707A(e).”.**

7                   (b) DETERMINATION OF OTHER UNDERSTATE-  
8                   MENTS.—Subparagraph (A) of section 6662(d)(2) is  
9                   amended by adding at the end the following flush sen-  
10                  tence:

11                  “The excess under the preceding sentence shall  
12                  be determined without regard to items to which  
13                  section 6662A applies and without regard to  
14                  items with respect to which a penalty is im-  
15                  posed by section 6662B.”.

16                  (c) REASONABLE CAUSE EXCEPTION.—

17                  (1) IN GENERAL.—Section 6664 is amended by  
18                  adding at the end the following new subsection:

19                  “(d) REASONABLE CAUSE EXCEPTION FOR POTEN-  
20                  Tially ABUSIVE TAX SHELTER UNDERSTATEMENTS.—

21                  “(1) IN GENERAL.—No penalty shall be im-  
22                  posed under section 6662A with respect to any por-  
23                  tion of a potentially abusive tax shelter understate-  
24                  ment if it is shown that there was a reasonable

1       cause for such portion and that the taxpayer acted  
2       in good faith with respect to such portion.

3               “(2) SPECIAL RULES.—Paragraph (1) shall not  
4       apply to any potentially abusive tax shelter under-  
5       statement unless—

6               “(A) the relevant facts affecting the tax  
7       treatment of the item are adequately disclosed  
8       in accordance with the regulations prescribed  
9       under section 6011,

10              “(B) there is or was substantial authority  
11       for such treatment, and

12              “(C) the taxpayer reasonably believed that  
13       such treatment was more likely than not the  
14       proper treatment.

15       A taxpayer failing to adequately disclose in accord-  
16       ance with section 6011 shall be treated as meeting  
17       the requirements of subparagraph (A) if the penalty  
18       for such failure was rescinded under section  
19       6707A(d).

20              “(3) RULES RELATING TO REASONABLE BE-  
21       LIEF.—For purposes of paragraph (2)(C)—

22              “(A) IN GENERAL.—A taxpayer shall be  
23       treated as having a reasonable belief with re-  
24       spect to the tax treatment of an item only if  
25       such belief—

1 “(i) is based on the facts and law that  
2 exist at the time the return of tax which  
3 includes such tax treatment is filed, and

4 “(ii) relates solely to the taxpayer’s  
5 chances of success on the merits of such  
6 treatment and does not take into account  
7 the possibility that a return will not be au-  
8 dited, such treatment will not be raised on  
9 audit, or such treatment will be resolved  
10 through settlement if it is raised.

11 “(B) CERTAIN OPINIONS MAY NOT BE RE-  
12 LIED UPON.—

13 “(i) IN GENERAL.—An opinion of a  
14 tax advisor may not be relied upon to es-  
15 tablish the reasonable belief of a taxpayer  
16 if—

17 “(I) the tax advisor is described  
18 in clause (ii), or

19 “(II) the opinion is described in  
20 clause (iii).

21 “(ii) DISQUALIFIED TAX ADVISORS.—  
22 A tax advisor is described in this clause if  
23 the tax advisor—

24 “(I) is a material advisor (within  
25 the meaning of section 6111(b)(1))

1 who participates in the organization,  
2 management, promotion, or sale of  
3 the transaction or who is related  
4 (within the meaning of section 267(b)  
5 or 707(b)(1)) to any person who so  
6 participates,

7 “(II) is compensated directly or  
8 indirectly by a material advisor with  
9 respect to the transaction,

10 “(III) has a fee arrangement  
11 with respect to the transaction which  
12 is contingent on all or part of the in-  
13 tended tax benefits from the trans-  
14 action being sustained, or

15 “(IV) as determined under regu-  
16 lations prescribed by the Secretary,  
17 has a disqualifying financial interest  
18 with respect to the transaction.

19 “(iii) DISQUALIFIED OPINIONS.—For  
20 purposes of clause (i), an opinion is dis-  
21 qualified if the opinion—

22 “(I) is based on unreasonable  
23 factual or legal assumptions (includ-  
24 ing assumptions as to future events),

1 “(II) unreasonably relies on rep-  
2 resentations, statements, findings, or  
3 agreements of the taxpayer or any  
4 other person,

5 “(III) does not identify and con-  
6 sider all relevant facts, or

7 “(IV) fails to meet any other re-  
8 quirement as the Secretary may pre-  
9 scribe.”.

10 (2) CONFORMING AMENDMENT.—The heading  
11 for subsection (c) of section 6664 is amended by in-  
12 serting “FOR UNDERPAYMENTS” after “EXCEP-  
13 TION”.

14 (d) CONFORMING AMENDMENTS.—

15 (1) Subparagraph (C) of section 461(i)(3) is  
16 amended by striking “section 6662(d)(2)(C)(iii)”  
17 and inserting “section 1274(b)(3)(C)”.

18 (2) Paragraph (3) of section 1274(b) is  
19 amended—

20 (A) by striking “(as defined in section  
21 6662(d)(2)(C)(iii))” in subparagraph (B)(i),  
22 and

23 (B) by adding at the end the following new  
24 subparagraph:

1                   “(C) TAX SHELTER.—For purposes of sub-  
2                   paragraph (B), the term ‘tax shelter’ means—  
3                   “(i) a partnership or other entity,  
4                   “(ii) any investment plan or arrange-  
5                   ment, or  
6                   “(iii) any other plan or arrangement,  
7                   if a significant purpose of such partnership, en-  
8                   tity, plan, or arrangement is the avoidance or  
9                   evasion of Federal income tax.”.

10                  (3) Section 6662(d)(2) is amended by striking  
11                  subparagraphs (C) and (D).

12                  (4) Section 6664(c)(1) is amended by striking  
13                  “this part” and inserting “section 6662 or 6663”.

14                  (5) Subsection (b) of section 7525 is amended  
15                  by striking “section 6662(d)(2)(C)(iii)” and insert-  
16                  ing “section 1274(b)(3)(C)”.

17                  (6)(A) The heading for section 6662 is amend-  
18                  ed to read as follows:

19                  **“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY**  
20                  **ON UNDERPAYMENTS.”.**

21                  (B) The table of sections for part II of sub-  
22                  chapter A of chapter 68 is amended by striking the  
23                  item relating to section 6662 and inserting the fol-  
24                  lowing new items:

                    “Sec. 6662. Imposition of accuracy-related penalty on underpay-  
                    ments.

“Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to potentially abusive tax shelter.”.

1       (e) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years ending after the  
3 date of the enactment of this Act.

4       **SEC. 303. PENALTY FOR UNDERSTATEMENTS ATTRIB-**  
5                               **UTABLE TO TRANSACTIONS LACKING ECO-**  
6                               **NOMIC SUBSTANCE, ETC.**

7       (a) IN GENERAL.—Subchapter A of chapter 68, as  
8 amended by section 302, is amended by inserting after  
9 section 6662A the following new section:

10       **“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIB-**  
11                               **UTABLE TO TRANSACTIONS LACKING ECO-**  
12                               **NOMIC SUBSTANCE, ETC.**

13       “(a) IMPOSITION OF PENALTY.—If a taxpayer has a  
14 noneconomic substance transaction understatement for  
15 any taxable year, there shall be added to the tax an  
16 amount equal to 40 percent of the amount of such under-  
17 statement.

18       “(b) REDUCTION OF PENALTY FOR DISCLOSED  
19 TRANSACTIONS.—Subsection (a) shall be applied by sub-  
20 stituting ‘20 percent’ for ‘40 percent’ with respect to the  
21 portion of any noneconomic substance transaction under-  
22 statement with respect to which the relevant information  
23 affecting the tax treatment of the item is adequately dis-  
24 closed in the return or a statement attached to the return.



1       “(c) NONECONOMIC SUBSTANCE TRANSACTION UN-  
2       DERSTATEMENT.—For purposes of this section—

3               “(1) IN GENERAL.—The term ‘noneconomic  
4       substance transaction understatement’ means the  
5       sum of—

6               “(A) the product of—

7                       “(i) the amount of the increase (if  
8                       any) in taxable income which results from  
9                       a difference between the proper tax treat-  
10                      ment of an item attributable to a non-  
11                      economic substance transaction and the  
12                      taxpayer’s treatment of such item (as  
13                      shown on the taxpayer’s return of tax),  
14                      and

15                     “(ii) the highest rate of tax imposed  
16                     by section 1 (section 11 in the case of a  
17                     taxpayer which is a corporation), and

18               “(B) the amount of the decrease (if any)  
19       in the aggregate amount of credits determined  
20       under subtitle A which results from a difference  
21       between the taxpayer’s treatment of an item at-  
22       tributable to a noneconomic substance trans-  
23       action (as shown on the taxpayer’s return of  
24       tax) and the proper tax treatment of such item.

1 For purposes of subparagraph (A), any reduction of  
2 the excess of deductions allowed for the taxable year  
3 over gross income for such year, and any reduction  
4 in the amount of capital losses which would (without  
5 regard to section 1211) be allowed for such year,  
6 shall be treated as an increase in taxable income.

7 “(2) NONECONOMIC SUBSTANCE TRANS-  
8 ACTION.—The term ‘noneconomic substance trans-  
9 action’ means any transaction if—

10 “(A) there is a lack of economic substance  
11 (within the meaning of section 7701(n)(1)) for  
12 the transaction giving rise to the claimed ben-  
13 efit or the transaction was not respected under  
14 section 7701(n)(2), or

15 “(B) the transaction fails to meet the re-  
16 quirements of any similar rule of law.

17 “(d) RULES APPLICABLE TO COMPROMISE OF PEN-  
18 ALTY.—

19 “(1) IN GENERAL.—If the 1st letter of pro-  
20 posed deficiency which allows the taxpayer an oppor-  
21 tunity for administrative review in the Internal Rev-  
22 enue Service Office of Appeals has been sent with  
23 respect to a penalty to which this section applies,  
24 only the Commissioner of Internal Revenue may  
25 compromise all or any portion of such penalty.

1           “(2) DISCRETION.—The exercise of authority  
2           under paragraph (1) shall be at the sole discretion  
3           of the Commissioner and may be delegated only to  
4           the head of the Office of Tax Shelter Analysis. The  
5           Commissioner, in the Commissioner’s sole discretion,  
6           may establish a procedure to determine if a penalty  
7           should be referred to the Commissioner or the head  
8           of such Office for a determination under paragraph  
9           (1).

10           “(3) NO APPEAL.—Notwithstanding any other  
11           provision of law, any determination under this sub-  
12           section may not be reviewed in any administrative or  
13           judicial proceeding.

14           “(4) RECORDS.—If a penalty is rescinded under  
15           paragraph (1), the Commissioner shall place in the  
16           file in the Office of the Commissioner the opinion of  
17           the Commissioner or the head of the Office of Tax  
18           Shelter Analysis with respect to the determination,  
19           including—

20                   “(A) the facts and circumstances of the  
21           transaction,

22                   “(B) the reasons for the rescission, and

23                   “(C) the amount of the penalty rescinded.

24           “(5) REPORT.—The Commissioner shall each  
25           year report to the Committee on Ways and Means

1 of the House of Representatives and the Committee  
2 on Finance of the Senate—

3 “(A) a summary of the total number and  
4 aggregate amount of penalties imposed, and re-  
5 scinded, under this section, and

6 “(B) a description of each penalty re-  
7 scinded under this subsection and the reasons  
8 therefor.

9 “(e) PENALTY REPORTED TO SEC.—In the case of  
10 a person—

11 “(1) which is required to file periodic reports  
12 under section 13 or 15(d) of the Securities Ex-  
13 change Act of 1934 or is required to be consolidated  
14 with another person for purposes of such reports,  
15 and

16 “(2) which is required to pay a penalty under  
17 this section with respect to any noneconomic sub-  
18 stance transaction,

19 the requirement to pay such penalty shall be disclosed in  
20 such reports filed by such person for such periods as the  
21 Secretary shall specify. Failure to make a disclosure in  
22 accordance with the preceding sentence shall be treated  
23 as a failure to which the penalty under subsection (b) ap-  
24 plies.

25 “(f) SPECIAL RULES.—

1           “(1) COORDINATION WITH PENALTIES, ETC.,  
2           ON OTHER UNDERSTATEMENTS.—In the case of an  
3           understatement (as defined in section 6662(d)(2))—

4                   “(A) the amount of such understatement  
5                   (determined without regard to this paragraph)  
6                   shall be increased by the aggregate amount of  
7                   noneconomic substance transaction understate-  
8                   ments for purposes of determining whether  
9                   such understatement is a substantial under-  
10                  statement under section 6662(d)(1), and

11                   “(B) the addition to tax under section  
12                   6662(a) shall apply only to the excess of the  
13                   amount of the substantial understatement (if  
14                   any) after the application of subparagraph (A)  
15                   over the aggregate amount of noneconomic sub-  
16                   stance transaction understatements.

17           “(2) COORDINATION WITH OTHER PEN-  
18           ALTIES.—

19                   “(A) IN GENERAL.—Except as otherwise  
20                   provided in subparagraph (C), the penalty im-  
21                   posed by this section shall be in addition to any  
22                   other penalty imposed by this title.

23                   “(B) APPLICATION OF FRAUD PENALTY.—  
24                   References to an underpayment in section 6663  
25                   shall be treated as including references to a

1 noneconomic substance transaction understate-  
2 ment.

3 “(C) NO DOUBLE PENALTY.—This section  
4 shall not apply to any portion of an understate-  
5 ment on which a penalty is imposed under sec-  
6 tion 6663.

7 “(3) SPECIAL RULE FOR AMENDED RE-  
8 TURNS.—Except as provided in regulations, in no  
9 event shall any tax treatment included with an  
10 amendment or supplement to a return of tax be  
11 taken into account in determining the amount of any  
12 noneconomic substance transaction understatement  
13 if the amendment or supplement is filed after the  
14 earlier of the date the taxpayer is first contacted by  
15 the Secretary regarding the examination of the re-  
16 turn or such other date as is specified by the Sec-  
17 retary.”.

18 (b) CLERICAL AMENDMENT.—The table of sections  
19 for part II of subchapter A of chapter 68, as amended  
20 by section 302, is amended by inserting after the item re-  
21 lating to section 6662 the following new item:

“Sec. 6662B. Penalty for understatements attributable to trans-  
actions lacking economic substance, etc.”.

22 (c) EFFECTIVE DATE.—The amendments made by  
23 this section shall apply to transactions entered after the  
24 date of the enactment of this Act.

1 **SEC. 304. DENIAL OF DEDUCTION FOR INTEREST ON UN-**  
2 **DERPAYMENTS ATTRIBUTABLE TO NON-**  
3 **ECONOMIC SUBSTANCE TRANSACTIONS.**

4 (a) IN GENERAL.—Section 163 (relating to deduction  
5 for interest) is amended by redesignating subsection (m)  
6 as subsection (n) and by inserting after subsection (l) the  
7 following new subsection:

8 “(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE  
9 TO NONECONOMIC SUBSTANCE TRANSACTIONS.—No de-  
10 duction shall be allowed under this chapter for any inter-  
11 est paid or accrued under section 6601 on any under-  
12 payment of tax which is attributable to any noneconomic  
13 substance transaction understatement (as defined in sec-  
14 tion 6662A(c)(1)).”.

15 (b) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to transactions in taxable years  
17 beginning after the date of the enactment of this Act.

18 **TITLE IV—DETERRING**  
19 **UNCOOPERATIVE TAX HAVENS**

20 **SEC. 401. DISCLOSING PAYMENTS TO PERSONS IN UNCO-**  
21 **OPERATIVE TAX HAVENS.**

22 (a) IN GENERAL.—Subpart A of part III of sub-  
23 chapter A of chapter 61 is amended by inserting after sec-  
24 tion 6038C the following new section:

1   **“SEC. 6038D. DETERRING UNCOOPERATIVE TAX HAVENS**  
2                   **THROUGH LISTING AND REPORTING RE-**  
3                   **QUIREMENTS.**

4           “(a) IN GENERAL.—Each United States person who  
5 transfers money or other property directly or indirectly to  
6 any uncooperative tax haven, to any financial institution  
7 licensed by or operating in any uncooperative tax haven,  
8 or to any person who is a resident of any uncooperative  
9 tax haven shall furnish to the Secretary, at such time and  
10 in such manner as the Secretary shall by regulation pre-  
11 scribe, such information with respect to such transfer as  
12 the Secretary may require.

13          “(b) EXCEPTIONS.—Subsection (a) shall not apply to  
14 a transfer by a United States person if the amount of  
15 money (and the fair market value of property) transferred  
16 is less than \$10,000. Related transfers shall be treated  
17 as 1 transfer for purposes of this subsection.

18          “(c) UNCOOPERATIVE TAX HAVEN.—For purposes of  
19 this section—

20               “(1) IN GENERAL.—The term ‘uncooperative  
21 tax haven’ means any foreign jurisdiction which is  
22 identified on a list maintained by the Secretary  
23 under paragraph (2) as being a jurisdiction—

24                   “(A) which imposes no or nominal taxation  
25 either generally or on specified classes of in-  
26 come, and



1           “(B) has corporate, business, bank, or tax  
2           secrecy or confidentiality rules and practices, or  
3           has ineffective information exchange practices  
4           which, in the judgment of the Secretary, effec-  
5           tively limit or restrict the ability of the United  
6           States to obtain information relevant to the en-  
7           forcement of this title.

8           “(2) MAINTENANCE OF LIST.—Not later than  
9           November 1 of each calendar year, the Secretary  
10          shall issue a list of foreign jurisdictions which the  
11          Secretary determines qualify as uncooperative tax  
12          havens under paragraph (1).

13          “(3) INEFFECTIVE INFORMATION EXCHANGE  
14          PRACTICES.—For purposes of paragraph (1), a juris-  
15          diction shall be deemed to have ineffective informa-  
16          tion exchange practices if the Secretary determines  
17          that during any taxable year ending in the 12-month  
18          period preceding the issuance of the list under para-  
19          graph (2)—

20                 “(A) the exchange of information between  
21                 the United States and such jurisdiction was in-  
22                 adequate to prevent evasion or avoidance of  
23                 United States income tax by United States per-  
24                 sons or to enable the United States effectively  
25                 to enforce this title, or

1           “(B) such jurisdiction was identified by an  
2           intergovernmental group or organization of  
3           which the United States is a member as unco-  
4           operative with international tax enforcement or  
5           information exchange and the United States  
6           concurs in the determination.

7           “(d) PENALTY FOR FAILURE TO FILE INFORMA-  
8           TION.—If a United States person fails to furnish the infor-  
9           mation required by subsection (a) with respect to any  
10          transfer within the time prescribed therefor (including ex-  
11          tensions), such United States person shall pay (upon no-  
12          tice and demand by the Secretary and in the same manner  
13          as tax) an amount equal to 20 percent of the amount of  
14          such transfer.

15          “(e) SIMPLIFIED REPORTING.—The Secretary may  
16          by regulations provide for simplified reporting under this  
17          section for United States persons making large volumes  
18          of similar payments.

19          “(f) REGULATIONS.—The Secretary shall prescribe  
20          such regulations as may be necessary or appropriate to  
21          carry out the purposes of this section.”.

22          (b) CLERICAL AMENDMENT.—The table of sections  
23          for such subpart A is amended by inserting after the item  
24          relating to section 6038C the following new item:

“Sec. 6038D. Deterring uncooperative tax havens through listing and reporting requirements.”.

1       (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to transfers after the date which  
3 is 180 days after the date of the enactment of this Act.

4       **SEC. 402. DETERRING UNCOOPERATIVE TAX HAVENS BY**  
5               **RESTRICTING ALLOWABLE TAX BENEFITS.**

6       (a) LIMITATION ON DEFERRAL.—

7               (1) IN GENERAL.—Subsection (a) of section  
8 952 (defining subpart F income) is amended by  
9 striking “and” at the end of paragraph (4), by strik-  
10 ing the period at the end of paragraph (5) and in-  
11 serting “, and”, and by inserting after paragraph  
12 (5) the following new paragraph:

13               “(6) an amount equal to the applicable fraction  
14 (as defined in subsection (e)) of the income of such  
15 corporation other than income which—

16               “(A) is attributable to earnings and profits  
17 of the foreign corporation included in the gross  
18 income of a United States person under section  
19 951 (other than by reason of this paragraph or  
20 paragraph (3)(A)(i)), or

21               “(B) is described in subsection (b).”.

22       (2) APPLICABLE FRACTION.—Section 952 is  
23 amended by adding at the end the following new  
24 subsection:

1       “(e) IDENTIFIED TAX HAVEN INCOME WHICH IS  
2 SUBPART F INCOME.—

3               “(1) IN GENERAL.—For purposes of subsection  
4 (a)(6), the term ‘applicable fraction’ means the  
5 fraction—

6                       “(A) the numerator of which is the aggre-  
7 gate identified tax haven income for the taxable  
8 year, and

9                       “(B) the denominator of which is the ag-  
10 gregate income for the taxable year which is  
11 from sources outside the United States.

12               “(2) IDENTIFIED TAX HAVEN INCOME.—For  
13 purposes of paragraph (1), the term ‘identified tax  
14 haven income’ means income for the taxable year  
15 which is attributable to a foreign jurisdiction for any  
16 period during which such jurisdiction has been iden-  
17 tified as an uncooperative tax haven under section  
18 6038D(c).

19               “(3) REGULATIONS.—The Secretary shall pre-  
20 scribe regulations similar to the regulations issued  
21 under section 999(c) to carry out the purposes of  
22 this subsection.”.

23       (b) DENIAL OF FOREIGN TAX CREDIT.—Section 901  
24 (relating to taxes of foreign countries and of possessions  
25 of United States) is amended by redesignating subsection

1 (l) as subsection (m) and by inserting after subsection (k)  
2 the following new subsection:

3 “(l) REDUCTION OF FOREIGN TAX CREDIT, ETC.,  
4 FOR IDENTIFIED TAX HAVEN INCOME.—

5 “(1) IN GENERAL.—Notwithstanding any other  
6 provision of this part—

7 “(A) no credit shall be allowed under sub-  
8 section (a) for any income, war profits, or ex-  
9 cess profits taxes paid or accrued (or deemed  
10 paid under section 902 or 960) to any foreign  
11 jurisdiction if such taxes are with respect to in-  
12 come attributable to a period during which such  
13 jurisdiction has been identified as an unco-  
14 operative tax haven under section 6038D(c),  
15 and

16 “(B) subsections (a), (b), (c), and (d) of  
17 section 904 and sections 902 and 960 shall be  
18 applied separately with respect to all income of  
19 a taxpayer attributable to periods described in  
20 subparagraph (A) with respect to all such juris-  
21 dictions.

22 “(2) TAXES ALLOWED AS A DEDUCTION, ETC.—  
23 Sections 275 and 78 shall not apply to any tax  
24 which is not allowable as a credit under subsection  
25 (a) by reason of this subsection.

1           “(3) REGULATIONS.—The Secretary shall pre-  
2       scribe such regulations as may be necessary or ap-  
3       propriate to carry out the purposes of this sub-  
4       section, including regulations which treat income  
5       paid through 1 or more entities as derived from a  
6       foreign jurisdiction to which this subsection applies  
7       if such income was, without regard to such entities,  
8       derived from such jurisdiction.”.

9       (c) EFFECTIVE DATE.—The amendments made by  
10      this section shall apply to taxable years beginning after  
11      the date of the enactment of this Act.